IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CIVIL WRIT PETITION NO.2178/04

Smt. Gyarsi Devi **Versus** State & Ors.

DATE OF ORDER :: 16/05/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

None present for petitioner
Mr. B.S. Chhaba, Dy.G.A.

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Instant petition has been filed by petitioner seeking compensation on failure of sterlization operation.

Counsel for respondents has brought to the notice of this court the judgment of Apex Court reported in **State of Haryana & Ors. Vs. Raj Rani [(2005) 7 SCC-22]** where it has been observed that childbirth inspite of a sterlization operation can occur due to negligence of doctor in performance of operation or due to certain natural causes such as spontaneous recanalisation. The doctor can be held liable only in cases where the failure of operation is attributable to his negligence and not otherwise - relevant Para 3 whereof is ad infra:

> “A three-Judge Bench of this court has held in State of Punjab Vs. Shiv Ram that childbirth inspite of a sterlization operation can occur due to negligence of doctor in performance of operation or due to certain natural

> causes such as spontaneous recanalisation. The doctor can be held liable only in cases where the failure of operation is attributable to his negligence and not otherwise. Several textbooks on medical negligence have recognized the percentage of failure of the sterlization operation due to natural causes to be varying between 0.3% to 7% depending on the techniques or method chosen for performing the surgery out of the several prevalent and acceptable ones in medical science. The fallopian tubes which are cut and sealed may reunite and the woman may conceive though the surgery was performed by a proficient doctor successfully by adopting a technique recognized by medical science. Thus, the pregnancy can be for reaosns dehors any negligence of the surgeon. In the absence of proof of negligence, the surgeon cannot be held liable to pay compensation. Then the question of the State being held vicariously liable also would not arise. The decreeds cannot, therefore, be upheld".

In the light of judgment of apex court [supra], petitioner is not entitled for any relief in the instant petition. The same is, accordingly, dismissed.

[AJAY RASTOGI],J.

FRBOHRA,JR.P.A.